

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**May 20, 2024**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

KIP D.,

Plaintiff,

v.

MARTIN O'MALLEY,  
Commissioner of Social Security,

Defendant.

NO. 4:23-CV-5174-TOR

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT is Plaintiff's Motion for Summary Judgment. ECF No. 7. The matter was submitted for consideration without oral argument. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, Plaintiff's Motion for Summary Judgment (ECF No. 7) is **DENIED** and the final order of the Social Security Commissioner is **AFFIRMED**.

**JURISDICTION**

The Court has jurisdiction over this action pursuant to 42 U.S.C. § 405(g).

## STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the [administrative law judge's] (ALJ's) findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (citation omitted). Further, a district court "may not reverse an ALJ's decision on account of an error that is harmless." *Id.* An error is harmless "where it is inconsequential to the [ALJ's] ultimate nondisability determination." *Id.* at

1 1115 (quotation and citation omitted). The party appealing the ALJ’s decision  
2 bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S.  
3 396, 409–10 (2009).

#### 4 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

5 A claimant must satisfy two conditions to be considered “disabled” within  
6 the meaning of the Social Security Act. First, the claimant must be “unable to  
7 engage in any substantial gainful activity by reason of any medically determinable  
8 physical or mental impairment which can be expected to result in death or which  
9 has lasted or can be expected to last for a continuous period of not less than twelve  
10 months.” 42 U.S.C. § 423(d)(1)(A). Second, the claimant’s impairment must be  
11 “of such severity that he is not only unable to do his previous work[,] but cannot,  
12 considering his age, education, and work experience, engage in any other kind of  
13 substantial gainful work which exists in the national economy.” 42 U.S.C.  
14 § 423(d)(2)(A).

15 The Commissioner has established a five-step sequential analysis to  
16 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §  
17 404.1520(a)(4)(i)–(v). At step one, the Commissioner considers the claimant’s  
18 work activity. 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is engaged in  
19 “substantial gainful activity,” the Commissioner must find that the claimant is not  
20 disabled. 20 C.F.R. § 404.1520(b).

1           If the claimant is not engaged in substantial gainful activities, the analysis  
2 proceeds to step two. At this step, the Commissioner considers the severity of the  
3 claimant's impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers  
4 from "any impairment or combination of impairments which significantly limits  
5 [his] physical or mental ability to do basic work activities," the analysis proceeds  
6 to step three. 20 C.F.R. § 404.1520(c). If the claimant's impairment does not  
7 satisfy this severity threshold, however, the Commissioner must find that the  
8 claimant is not disabled. *Id.*

9           At step three, the Commissioner compares the claimant's impairment to  
10 several listed impairments recognized by the Commissioner to be so severe as to  
11 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §  
12 404.1520(a)(4)(iii). If an impairment is as severe or more severe than one of the  
13 enumerated impairments, the Commissioner must find the claimant disabled and  
14 award benefits. 20 C.F.R. § 404.1520(d).

15           If the severity of the claimant's impairment meets or exceeds the severity of  
16 the enumerated impairments, the Commissioner must pause to assess the  
17 claimant's "residual functional capacity." Residual functional capacity (RFC) is  
18 defined generally as the claimant's ability to perform physical and mental work  
19 activities on a sustained basis despite his limitations and is relevant to both the  
20 fourth and fifth steps of the analysis. 20 C.F.R. § 404.1545(a)(1).

1 At step four, the Commissioner considers whether, in view of the claimant's  
2 RFC, the claimant is capable of performing work that he has previously performed  
3 ("past relevant work"). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is capable  
4 of performing past relevant work, the Commissioner must find that the claimant is  
5 not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of performing  
6 such work, the analysis proceeds to step five.

7 At step five, the Commissioner considers whether, in view of the claimant's  
8 RFC, the claimant is capable of performing other work in the national economy.  
9 20 C.F.R. § 404.1520(a)(4)(v). In making this determination, the Commissioner  
10 must also consider vocational factors such as the claimant's age, education and  
11 work experience. *Id.* If the claimant is capable of adjusting to other work, the  
12 Commissioner must find that the claimant is not disabled. 20 C.F.R. §  
13 404.1520(g)(1). If the claimant is not capable of adjusting to other work, the  
14 Commissioner will conclude that the claimant is disabled and therefore entitled to  
15 benefits. *Id.*

16 The claimant bears the burden of proof at steps one through four above.  
17 *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009). If the  
18 analysis proceeds to step five, the burden shifts to the Commissioner to establish  
19 that (1) the claimant is capable of performing other work; and (2) such work  
20

1 “exists in significant numbers in the national economy.” 20 C.F.R. § 416.1560(c);  
2 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

### 3 **ALJ’S FINDINGS**

4 Plaintiff applied for disability insurance benefits on April 14, 2021, alleging  
5 a disability onset date of August 31, 2020. Tr. 89. Plaintiff’s claim was initially  
6 denied on November 18, 2021, and denied again upon reconsideration on February  
7 1, 2022. Tr. 110, 116. Plaintiff requested a hearing. Tr. 120. A telephonic  
8 hearing was held before an ALJ on March 9, 2023. Tr. 43. On May 4, 2023, the  
9 ALJ denied Plaintiff’s claim. Tr. 18. The Appeals Council denied Plaintiff’s  
10 request for review on November 14, 2023. Tr. 5.

11 As a threshold matter, the ALJ found Plaintiff met the insured status  
12 requirements of the Social Security Act through December 31, 2025. Tr. 22-23.  
13 At the first step of the sequential evaluation process, the ALJ determined that  
14 Plaintiff had not engaged in substantial gainful activity since August 31, 2020. Tr.  
15 23. At step two, the ALJ identified the following severe impairments:  
16 posttraumatic stress disorder (PTSD), right ankle traumatic arthropathy (post-  
17 surgery), and bilateral carpal tunnel syndrome (post-surgery). *Id.* The ALJ  
18 decided that Plaintiff’s chronic skin condition was non-severe. Tr. 24. At step  
19 three, the ALJ found Plaintiff did not have an impairment or combination of  
20 impairments that met or medically equaled the severity of a listed impairment. Tr.

1 24-27. Following that, the ALJ found that Plaintiff had the RFC to perform  
2 medium work as defined in 20 C.F.R. § 404.1567(c), with the following  
3 limitations:

4 [H]e is limited to no more than frequent handling and fingering  
5 bilaterally; he is limited to low stress work with no production  
6 pace/conveyor belt-type work (non-worker controlled pace); he needs  
7 a predictable work environment; and is limited to brief and superficial  
interaction with the public, co-workers, and supervisors (though  
interaction with supervisors can increase as necessary for training).

8 Tr. 27.

9 At step four, the ALJ stated that Plaintiff was unable to perform any past  
10 relevant work. Tr. 35-36. At step five, the ALJ noted that Plaintiff's ability to  
11 perform a full range of medium work was impeded by additional limitations and  
12 solicited testimony from an impartial vocational expert as to "the extent to which  
13 these limitations erode[d] the unskilled medium occupational base." Tr. 37. The  
14 vocational expert testified that Plaintiff could find employment as an (1) industrial  
15 cleaner, (2) auto detailer, or (3) floor waxer. Tr. 37. Based on the testimony of the  
16 vocational expert, the ALJ concluded that Plaintiff was capable of making a  
17 successful adjustment to other jobs which existed in significant numbers in the  
18 national economy. Tr. 36. Accordingly, the ALJ determined that Plaintiff had not  
19 been under a disability from August 31, 2020 through May 4, 2023. Tr. 37.

## ISSUES

Plaintiff seeks judicial review of the Commissioner's final decision denying him disability insurance benefits under Title II of the Social Security Act. Plaintiff submits the following four issues for judicial review:

1. Whether the ALJ properly determined Plaintiff's skin conditions were non-severe and did not meet or medically equal the severity of a listed impairment;
2. Whether the ALJ properly rejected Plaintiff's subjective symptom testimony;
3. Whether the ALJ properly evaluated Dr. Cook's medical assessment; and
4. Whether the hypothetical the ALJ posed to the vocational expert included all of Plaintiff's limitations.

ECF No. 7 at 4.

### **I. Skin Conditions**

Plaintiff suffers from psoriasis, which causes rashes and patchiness, and actinic keratosis, which causes his skin to break out in lesions. *See* Tr. 532. Both skin disorders are reported to worsen with mental stress. Tr. 24. At step two, the ALJ reviewed the medical evidence and concluded Plaintiff's skin disorders were non-severe. *Id.* At step three, the ALJ found that Plaintiff's disorders did not meet or medically equal the severity of a listed impairment. *Id.* at 26.

Plaintiff asserts the ALJ's findings regarding his skin condition at steps two and three are unsupported by substantial evidence. ECF No. 7 at 7. Although



1 Plaintiff admits that he experienced some improvements in his condition during the  
2 period of disability, he attributes these changes to the fact that he was not working  
3 during that period and argues that a return to employment would trigger more  
4 frequent flareups. *Id.* at 9-10. He likewise argues that the ALJ erred in finding  
5 that his symptoms did not meet the 12-month durational requirement. *Id.*  
6 Separately, Plaintiff contends that the ALJ should have found that his skin  
7 condition causing lesions met or medically equaled the severity of Listing 8.09  
8 (formerly Listing 8.05). *Id.* at 7.

9       The Court begins by analyzing Plaintiff's claim under step two. As  
10 mentioned, the claimant must suffer from "any impairment or combination of  
11 impairments which significantly limits [his] physical or mental ability to do basic  
12 work activities" in order for the ALJ to find the plaintiff's condition severe at step  
13 two. 20 C.F.R. § 404.1520(c). Basic work activities include "[p]hysical functions  
14 such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or  
15 handling." 20 C.F.R. § 404.1522. Unless the impairment is expected to result in  
16 death, "it must have lasted or must be expected to last for a continuous period of at  
17 least 12 months." 20 C.F.R. § 404.1509. The task of the reviewing court is to  
18 "determine whether the ALJ had substantial evidence to find that the medical  
19 evidence clearly established that [the plaintiff] did not have a medically severe  
20 impairment or combination of impairments." *Webb v. Barnhart*, 433 F.3d 683, 687

1 (9th Cir. 2005). Step two is “a *de minimis* screening device [used] to dispose of  
2 groundless claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996).

3 The Court finds that the ALJ’s determination that Plaintiff’s skin disorders  
4 were non-severe is supported by substantial evidence. The ALJ reviewed the  
5 medical record and concluded that Plaintiff’s ability to perform basic work  
6 activities was not affected by his skin disorders. Tr. 24. Specifically, the ALJ  
7 reasoned that Plaintiff’s symptoms were mild or transient, under control with  
8 treatment, and had not persisted for a durational period of at least 12 consecutive  
9 months. *Id.* The ALJ also noted that the limited medical record did not establish  
10 the symptoms were ongoing. *Id.* However, the ALJ accounted for “all of the  
11 claimant’s medically determinable impairments, including those that are not  
12 severe, when assessing the claimant’s [RFC].” *Id.*

13 Plaintiff represents that his condition did persist for over a year. However,  
14 the relevant regulation requires an impairment to last or be expected to last “for a  
15 *continuous* period of at least 12 months.” 20 C.F.R. § 404.1509 (emphasis added).  
16 By his own admission, Plaintiff’s skin disorders waxed and waned in response to  
17 treatment and other external and environmental factors, such as cold weather. *See*  
18 ECF No. 7 at 8 (conceding that skin conditions improved when he was no longer in  
19 stressful situations); Tr. 535 (“Psoriasis is chronic in nature with periods of  
20 remissions and flares”), 538. While the treatment record does suggest that Plaintiff

1 had some lesions for one year, Tr. 532, his lesions were noted to be generally  
2 “asymptomatic,” Tr. 730, “stable,” and “mild in severity,” Tr. 538. Moreover,  
3 even if the duration of Plaintiff’s conditions did meet or exceed 12 months, the  
4 medical record before the Court establishes that Plaintiff’s symptoms tended to  
5 improve with treatment. *See, e.g.*, Tr. 538 (Plaintiff’s psoriasis cleared with use of  
6 medicated ointment).

7 Plaintiff argues in response that his flare-ups are stress-induced and that  
8 returning to work would aggravate his skin conditions. ECF No. 7 at 8. Although  
9 the treatment record does support that stress can trigger breakouts, Plaintiff’s  
10 provider also documented that flares may be triggered by infections, certain  
11 medications, alcohol, and wintry environmental conditions. Tr. 534, 538. There is  
12 no telling to what extent, if any, these other factors have impacted Plaintiff’s flare  
13 ups. Further, as discussed in Part II. of the Court’s analysis, Plaintiff was able to  
14 engage in a number of high-function physical activities despite his ongoing skin  
15 troubles, which indicates that Plaintiff could perform basic work activities.

16 Finally, to the extent that any error was committed at this step, it was harmless  
17 because the ALJ “considered all of the claimant’s medically determinable  
18 impairments, including those that are not severe, when assessing the claimant’s  
19 [RFC].” Tr. 24.

1 For the same reasons, the Court finds that the ALJ did not err at step three in  
2 finding that Plaintiff's skin disorders did not meet or medically equal the severity  
3 of a listed impairment. 20 C.F.R. 404.1520(d). Listing 8.05 no longer exists and  
4 has been incorporated into Listing 8.09; however, both listings include that the  
5 presence of "chronic" (Listing 8.09) or "extensive" (Listing 8.05) skin lesions for  
6 more than three months despite "continued" prescribed treatment require a finding  
7 of disability. 20 C.F.R. 404, Subpt. P., App. 1, §§ 805, 809. In this case, as the  
8 ALJ discussed, Plaintiff's lesions and related symptoms improved with treatment.  
9 Tr. 26. As such, the Court concludes that the ALJ's analysis of Plaintiff's skin  
10 disorder was under steps two or three was supported by substantial evidence.

## 11 **II. Subjective Symptom Testimony**

12 The underlying order reported that while Plaintiff's medically determinable  
13 impairments could be reasonably expected to produce some of his alleged  
14 symptoms, certain statements by Plaintiff "concerning the intensity, persistence  
15 and limiting effects of these symptoms are not entirely consistent with the medical  
16 evidence and other evidence in the record." Tr. 29. Plaintiff challenges this  
17 determination, arguing that the longitudinal record supports his symptoms and that  
18 the ALJ's analysis is based on a misunderstanding of his activities of daily living.  
19 ECF No. 7 at 12-13.

20 An ALJ engages in a two-step analysis to determine whether to discount a

1 claimant’s testimony regarding his subjective symptoms. SSR 16-3p, 2016 WL  
2 1119029, at \*2. “First, the ALJ must determine whether there is ‘objective  
3 medical evidence of an underlying impairment which could reasonably be  
4 expected to produce the pain or other symptoms alleged.’” *Molina*, 674 F.3d at  
5 1112 (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). “The  
6 claimant is not required to show that [the claimant’s] impairment ‘could reasonably  
7 be expected to cause the severity of the symptom [the claimant] has alleged; [the  
8 claimant] need only show that it could reasonably have caused some degree of the  
9 symptom.’” *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v. Astrue*, 504 F.3d  
10 1028, 1035–36 (9th Cir. 2007)).

11 Second, “[i]f the claimant meets the first test and there is no evidence of  
12 malingering, the ALJ can only reject the claimant’s testimony about the severity of  
13 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
14 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations  
15 omitted). General findings are insufficient; rather, the ALJ must identify what  
16 symptom claims are being discounted and what evidence undermines these claims.  
17 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*  
18 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently  
19 explain why he or she discounted claimant’s symptom claims). “The clear and  
20 convincing [evidence] standard is the most demanding required in Social Security

1 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*  
2 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

3 Factors to be considered in evaluating the intensity, persistence, and limiting  
4 effects of a claimant’s symptoms include: (1) daily activities; (2) the location,  
5 duration, frequency, and intensity of pain or other symptoms; (3) factors that  
6 precipitate and aggravate the symptoms; (4) the type, dosage, effectiveness, and  
7 side effects of any medication an individual takes or has taken to alleviate pain or  
8 other symptoms; (5) treatment, other than medication, an individual receives or has  
9 received for relief of pain or other symptoms; (6) any measures other than  
10 treatment an individual uses or has used to relieve pain or other symptoms; and (7)  
11 any other factors concerning an individual’s functional limitations and restrictions  
12 due to pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at \*7–8; 20 C.F.R.  
13 § 404.1529(c). The ALJ is instructed to “consider all of the evidence in an  
14 individual’s record,” “to determine how symptoms limit ability to perform work-  
15 related activities.” SSR 16-3p, 2016 WL 1119029, at \*2.

16 The ALJ found that the record was inconsistent with the reported severity of  
17 some of Plaintiff’s physical symptoms. Tr. 28. Plaintiff alleged he was disabled  
18 due to a right ankle injury, post-surgery. However, the ALJ found that most of the  
19 treatment record was generally conservative and that Plaintiff’s symptoms were  
20 well-managed through a regiment of medication, physical therapy, and injections.

1 Tr. 29; *see, e.g.*, Tr. 630 (noting that Plaintiff’s complaints of pain had “greatly  
2 resolved” with a cortisone shot). Respecting Plaintiff’s right ankle arthroscopy  
3 surgery in October 2020, Plaintiff’s ankle healed well and Plaintiff made positive  
4 progress following surgery. *See, e.g.*, Tr. 587 (10 weeks out from surgery,  
5 transitioning from the boot into regular shoes, noting 0/10 pain); 596 (developing a  
6 physical therapy plan to address Plaintiff’s pain and limping 14-weeks post-  
7 surgery); 599 (noting that Plaintiff’s ankle “feels a little better” and that “[h]e has  
8 eased back into his insanity workouts that he likes”); 608 (despite some weakness,  
9 “his ankle feels good, no pain” during and after spin classes); 627 (stating his ankle  
10 is doing well enough that he would like to transition to home management). As  
11 such, it was not error for the ALJ to reject the Plaintiff’s symptom testimony due to  
12 the presence of objective medical records which tended to establish Plaintiff’s  
13 symptoms of right ankle pain were generally resolved by surgery and conservative  
14 treatment.

15 Plaintiff also testified that he was disabled due to bilateral carpal tunnel  
16 syndrome, also post-surgery (both left and right wrists). There, too, the ALJ  
17 correctly determined that the medical records on the whole supported that the  
18 surgical operations improved Plaintiff’s pain and functioning. Tr. 30; *see, e.g.*, Tr.  
19 740 (noting 0/10 pain 14 weeks post-surgery and 3/10 pain with use in right side;  
20 improved from 5/10 pain shortly after the surgery); 742 (0/10 pain in left wrist

1 post-surgery with some aches at night). Although Plaintiff continued to receive  
2 post-operative treatment, it was reported that he was making good progress  
3 towards his goals, which included being independent with his home program,  
4 bearing full weight on his upper left extremity to practice yoga, improving his grip  
5 and pinch strength, and participating in household tasks without symptoms. Tr. at  
6 755-56. Therefore, Plaintiff's post-operative treatment record and functional  
7 ability does not support the contention that he is disabled due to ongoing wrist  
8 pain.

9 The ALJ also appropriately determined that Plaintiff's physical symptom  
10 testimony was undercut by his engagement in high-function activities. During the  
11 period of alleged disability, Plaintiff underwent multiple elective cosmetic surgical  
12 procedures, which he recovered from without incident. *See* Tr. 543-81. Although  
13 Plaintiff no longer golfed, an activity he once enjoyed, Tr. 668, during the same  
14 period he participated in "insanity" workouts and spin classes, went on hikes,  
15 managed his own self-care and household chores, and cared independently for his  
16 two dogs as well as assisting his elderly mother with her pets, Tr. 489-90. The  
17 Court agrees with the ALJ that these activities—particularly Plaintiff's regular  
18 exercise activities, elective procedures, and assumption of care for his mother's  
19 pets—constitute the sort of high-function activities which do not support a finding  
20 of disability. *Compare, e.g., Nicole N.-M. v. Comm'r, Soc. Sec. Admin.*, 649 F.



1 Supp. 3d 1025, 1036 (D. Or. 2022) (Plaintiff’s difficulties with managing her own  
2 hygiene, going grocery shopping, preparing meals, and maintaining custody of her  
3 children supported her subjective symptom testimony).

4 Plaintiff also submits that he is disabled due to PTSD and anxiety stemming  
5 from his mistreatment as a whistleblower of his former employer, a well-known  
6 government contractor. Tr. 28. Plaintiff exposed the fraud and abuses going on in  
7 his workplace led the U.S. Department of Justice to intervene in Plaintiff’s lawsuit  
8 and resulted in a multi-million dollar settlement by his former employer. Tr. 224.

9 As an employee, Plaintiff was repeatedly berated and harassed for raising concerns  
10 about the integrity of his workplace. Tr. 471-72. Plaintiff received a windfall from  
11 the settlement monies but had to agree not to return to work for his former  
12 employer.

13 While the ALJ noted that some symptomology of PTSD, anxiety or  
14 depression was present in the record, Plaintiff’s mental screenings were “largely  
15 within normal limits.” Tr. 31; *see also* Tr. 490 (Plaintiff was oriented x4, stayed  
16 on task, and demonstrated normal intellect, judgment, and insight). Plaintiff did  
17 not treat his mental illnesses with medication, and was self-aware that his fears,  
18 nightmares, and general paranoia reflected things he knew not to be true. Tr. 488,  
19 498. Additionally, many of Plaintiff’s therapeutic notes established that he was  
20 more concerned with healing his relationships and sense of isolation than his PTSD

1 symptomology. Tr. 32, 673, 679, 682. Accordingly, Plaintiff's daily activities and  
2 the medical record as a whole—including Plaintiff's reported treatment,  
3 functioning, and pain—supports the ALJ's rejection of Plaintiff's subjective  
4 symptom testimony.

### 5 **III. Medical Opinion of Dr. Cook**

6 Plaintiff ascribes error to the ALJ's evaluation of Dr. Diana Cook's medical  
7 opinion. ECF No. 7 at 13-18. Under the new Social Security regulations, the ALJ  
8 will no longer "give any specific evidentiary weight . . . to any medical  
9 opinion(s)." Revisions to Rules, 2017 WL 168819, 82 Fed. Reg. 5844-01, 5867–  
10 68. Instead, an ALJ must consider and evaluate the persuasiveness of all medical  
11 opinions or prior administrative medical findings from medical sources. 20 C.F.R.  
12 §§ 404.1520c(a)–(b), 416.920c(a)–(b). The factors for evaluating the  
13 persuasiveness of medical opinions and prior administrative medical findings  
14 include supportability, consistency, relationship with the claimant, specialization,  
15 and "other factors that tend to support or contradict a medical opinion or prior  
16 administrative medical finding," including but not limited to "evidence showing a  
17 medical source has familiarity with the other evidence in the claim or an  
18 understanding of our disability program's policies and evidentiary requirements."  
19 20 C.F.R. §§ 404.1520c(c)(1)–(5), 416.920c(c)(1)–(5).

20 The ALJ is required to explain how the most important factors,

1 supportability and consistency, were considered. 20 C.F.R. §§ 404.1520c(b)(2),  
2 416.920c(b)(2). Those factors are defined as follows:

3 (1) Supportability. The more relevant the objective medical evidence  
4 and supporting explanations presented by a medical source are to  
5 support his or her medical opinion(s) or prior administrative medical  
6 finding(s), the more persuasive the medical opinions or prior  
7 administrative medical finding(s) will be.

8 (2) Consistency. The more consistent a medical opinion(s) or prior  
9 administrative medical finding(s) is with the evidence from other  
10 medical sources and nonmedical sources in the claim, the more  
11 persuasive the medical opinion(s) or prior administrative medical  
12 finding(s) will be.

13 20 C.F.R. §§ 404.1520c(c)(1)–(2), 416.920c(c)(1)–(2).

14 The ALJ may, but is not required to, explain how “the other most persuasive  
15 factors in paragraphs (c)(3) through (c)(5)” were considered. 20 C.F.R. §§  
16 404.1520c(b)(2); 416.920c(b)(2). However, where two or more medical opinions  
17 or prior administrative findings “about the same issue are both equally well-  
18 supported . . . and consistent with the record . . . but are not exactly the same,” the  
19 ALJ is required to explain how “the most persuasive factors” were considered. 20  
20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2).

21 These regulations displace the Ninth Circuit’s standard that require an ALJ  
22 to provide “specific and legitimate” reasons for rejecting an examining doctor’s  
23 opinion. *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). As a result, the  
24 ALJ’s decision for discrediting any medical opinion “must simply be supported by

1 substantial evidence.” *Id.*

2 The ALJ found Dr. Cook’s opinion to be “only partially persuasive.” Tr. 33.  
3 The ALJ determined that Dr. Cook’s assessment that Plaintiff would have (1) mild  
4 to moderate impairment in workplace functioning and (2) no difficulty with simple  
5 and repetitive or detailed and complex tasks was generally consistent with the  
6 longitudinal record. *Id.* However, the ALJ disagreed with Dr. Cook’s opinion that  
7 Plaintiff would encounter marked limitations in dealing with (1) workplace stress  
8 and (2) maintaining attendance, writing:

9 [T]he opinion is based on a one-time consultative evaluation, and [Dr.  
10 Cook] has no history of treating the claimant for the diagnoses assessed.  
11 Furthermore, the opined marked limitations are not consistent with the  
12 claimant’s mental status exam . . . [or] the other evidence of record.

12 Tr. 33-34.

13 Plaintiff contends this analysis is unsupported by substantial evidence. The  
14 ALJ’s assessment of the reliability of Dr. Cook’s medical opinion was adequately  
15 explained and supported by substantial evidence. As to the supportability factor,  
16 the ALJ appropriately relied upon the fact that Dr. Cook did not have an  
17 established patient-provider relationship with Plaintiff and that the exam was  
18 intended to be a one-time consultation. *See Turner v. Comm’r of Soc. Sec.*, 613  
19 F.3d 1217, 1223 (9th Cir. 2010) (noting that limited treatment relationships may be  
20 unreliable). Respecting the consistency factor, the ALJ correctly noted that Dr.

1 Cook's own mental status examination of Plaintiff undercut some of her  
2 conclusions regarding Plaintiff's limitations, as did "other evidence of record,"  
3 such as Plaintiff's engagement in various activities. The ALJ's explanation of  
4 these factors was adequate and these findings are therefore supported by  
5 substantial evidence. The Court holds that the ALJ appropriately assessed the  
6 medical opinion of Dr. Cook by explaining how he considered the supportability  
7 and consistency factors.

#### 8 **IV. Testimony of Vocational Expert**

9 Finally, Plaintiff challenges the ALJ's assessment at step five, arguing that  
10 the hypothetical posed to the vocational expert was incomplete and incorrect. ECF  
11 No. 7 at 19. In questioning the expert, the ALJ posed the following hypothetical:

12 Let's assume [there's] a person of claimant's age, education, and work  
13 experience who could work at the medium level. And this person,  
14 however, would be limited to no more than frequent handling and  
15 fingering. And let's see, this person would need low stress work and  
16 by that I mean no production pace conveyor belt, non-worker controlled  
pace and a predictable work environment with minimal or no more than  
brief and superficial interaction with the public, coworkers, and  
supervisors, although interaction with supervisors could increase when  
necessary for training.

17 Tr. 78.

18 Plaintiff's challenge to the testimony of the vocational expert is premised on  
19 the assumption that the hypothetical did not contain all of his asserted limitations.  
20 As the Defendant observes, this contention simply repackages Plaintiff's

“arguments about the evaluation of his testimony and [the medical] opinion testimony.” ECF No. 8 at 10-11. The ALJ included the limitations which he found credible and supported by substantial evidence, and nothing further was required. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005) (holding the ALJ’s reliance on a vocational expert’s testimony was proper where the hypothetical posed contained limitations that the ALJ deemed credible). As such, the ALJ did not err in relying upon the vocational expert’s testimony.

### CONCLUSION

Having reviewed the record and the ALJ’s findings, the Court concludes the ALJ’s decision is supported by substantial evidence and free from harmful error.


### ACCORDINGLY, IT IS HEREBY ORDERED:

1. Plaintiff’s Motion for Summary Judgment (ECF No. 7) is **DENIED**.
2. The final decision of the Social Security Commissioner denying Plaintiff’s application for Title II benefits is **AFFIRMED**.

The District Court Executive is directed to enter this Order, enter judgment in favor of Defendant, furnish copies to counsel, and **CLOSE** the file.

DATED May 20, 2024.



  
THOMAS O. RICE  
United States District Judge